

## HUMAN SERVICES BOARD

# INTRODUCTION

## DISCUSSION

1. On October 3, 2007 DEA and VSP raided the home of [petitioners] at [address].
2. During the raid participated in by DEA agents and VSP (now) Lt. [name], chemicals were found and photographed taken of the areas in the [petitioners] home. The chemicals and paraphernalia found by DEA

and Lt. [name] documented in the CD admitted into evidence.

3. On October 3, 2007 the chemicals listed in the inventory were found in the home, predominantly in the basement of the [petitioners] home. However, a small amount of ephedrine was found in the bathroom of the [petitioners] home.
4. The uncontradicted testimony of Lt. [name] is that all the chemicals required for the creation of methamphetamines were present in the home. Also present were manuals and recipes for methamphetamines and ecstasy, glass equipment and cookers required for the creation of these substances.
5. Most of the chemical and equipment were found in the basement of the [petitioners] home. That area was not locked and photo P1010037 J.P.G. attached, clearly depicts a child's toy on the floor of the basement in the vicinity of the poisonous, gaseous and combustible chemicals and adjacent to a cooker.
6. Lt. [name] testified that the house and the chemicals stored therein created a dangerous situation for occupants of the home due to the combustibility of the chemicals and the gases that may or were given off by the chemicals in their stored state as well as gases given off in the cooking process of drug production. Specifically, the chemical mercuric chloride is highly toxic and corrosive. Poisoning can result from inhalation, ingestion and/or absorption through the skin. Ingestion and inhalation may result in renal disorder, failure or death. The only legitimate use of this chemical is in photographic development; there was no photo lab in the [petitioners] home.
7. The collection of chemicals found in the home of the [petitioners] and displayed in the CD photos are per se dangerous. Nitro methane (aka rocket fuel); the legitimate use for such would be to fuel model boats or airplanes. Again no such hobbies were present in

the [petitioners] home. Nitromethane is highly explosive.

8. The pictures display a basic drug lab set up in the basement of the home of a three-year-old and then 10-month-old. The lab was created in the area of the family laundry. Both parents and the two children resided in the home as of the date of October 3, 2007.
9. While the majority of the chemicals found in the basement of the [petitioners] home can be legally purchased and have legitimate at home uses, the array of the chemicals and the amount of chemicals, coupled with equipment that has no other legitimate purpose other than drug production, with the supporting manual and notes for production of methamphetamines provide uncontradicted evidence of a clandestine methamphetamine lab in this home.
10. The removing the red phosphorus from matches depicted in photo #1620J.P.G. and 1617J.P.G present a clear picture of parents taking steps in the process of creating illegal drugs in their basement and in so doing creating a dangerous environment for their children.
11. That is the clear and reasonable interpretation of the evidence presented.
12. The [petitioners] created a dangerous environment in an area that was accessible to their young children, and even if not accessible, created a dangerous home environment for the children, given the possibility of explosion and the emission of gases from the substances stores.

In response, the petitioners maintain that all the chemicals found in their basement were legal for them to possess and that although some of them were dangerous, there is no evidence or allegation that they were stored improperly

or that their children were ever exposed to them or present unsupervised in their vicinity. The parties agree that to date no criminal charges have been brought against the petitioners.

The Department's decision to substantiate the matter as one of child abuse is based on its view that the petitioners' creation of a "clandestine lab" to manufacture a controlled substance constituted a risk of harm to their children from "ingestion, contamination and explosion". The Department concedes that there is no evidence that the petitioners' enterprise ever advanced to the stage of actual production of any controlled substance. At most, it might reasonably be concluded that the petitioners *intended* to do so, but were foiled primarily, if not solely, by timely police action.

Abuse and neglect are specifically defined in the statute in pertinent part as follows:

(2) An "abused or neglected child" means a child whose physical health, psychological growth and development or welfare is harmed or is at substantial risk of harm by the acts or omissions of his or her parent or other person responsible for the child's welfare.

. . .

(4) "Risk of harm" means a significant danger that a child will suffer serious harm other than by accidental

means, which harm would be likely to cause physical injury, neglect, emotional maltreatment or sexual abuse.

33 V.S.A. § 4912

Although it is difficult to sympathize with the petitioners in this matter, it cannot be concluded that the mere presence of dangerous chemicals in their basement, whatever the intent for their ultimate use, constituted a significant risk of harm to their children within the meaning of the above statute. Indeed, given that there is no evidence that the chemicals in question were unsafely stored, the petitioner's children were probably in no more danger than those in certainly many other households where dangerous substances (e.g. cleaning compounds, pesticides, gasoline, etc.) are carelessly used and stored on a regular basis.

This is not to say that *if* the petitioners had actually gone beyond the initial obtaining and storage of the chemicals in question, and had actually used them in the manufacture of illegal drugs in their home, the same result would follow. The petitioners should consider themselves (and certainly their children) fortunate in that their plans appear to have been foiled largely by an intervening event they did not anticipate or control. Be that as it may, it cannot be concluded that a nefarious intent is sufficient, in

and of itself, to constitute child abuse within the meaning of the above statute.

ORDER

The Department's decision substantiating the report of child abuse in question is reversed.

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